

Remarks

Claims 1-20, and 23-28 are pending and at issue in this application. Claims 1, 15, 20, and 23 have been amended herein, and claims 21 and 22 have been canceled by this amendment. In addition, claim 28 has been added by this amendment.

The undersigned wishes to thank Examiner Pascua for courtesies extended during the telephonic interview conducted on August 14, 2007. During such interview, the examiner agreed that the applicant's remarks overcame the rejection of claim 22 under 35 U.S.C. § 112, first paragraph.

The applicant respectfully traverses the rejection of claims 1-20 and 23 for insufficient antecedent basis. Such claims have been amended to overcome such rejection. Reconsideration and withdrawal of this rejection is respectfully requested.

In addition, the applicant traverses the Office action rejection of claim 22 as indefinite under 35 U.S.C. § 112, second paragraph, for "the functional recitation that 'the first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements'"

As an initial matter, "[a] functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step." *Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20 (Fed. Cir. 2004).

As stated in the Manual for Patent Examining Procedure ("MPEP"),

[t]he essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

In reviewing a claim for compliance with 35 U.S.C. § 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim

apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. § 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent.

MPEP § 2173.02 (*emphasis added*). Further, “[t]he requirement to ‘distinctly’ claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles Only when a claim remains insolubly ambiguous without a discernible meaning after all attempts at construction must a court declare it indefinite.” *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366 (Fed. Cir. 2004). Furthermore, an applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which clearly indicates the boundaries of the subject matter the applicant wishes to protect. MPEP § 2173.01.

The recited functional limitation of claim 22 is intended to convey to one skilled in the art the capability or purpose of the structure of the first and second male and female closure elements, rather than the structure of the closure element. Because the applicant seeks to set out and circumscribe the capability or purpose of the closure element structure, it is the functional limitation that needs be clearly set out with a reasonable degree of clarity and particularity. The specification clearly supports the claimed function by stating that “[i]n one embodiment, the first closing force is greater than the second closing force. In another embodiment, the second closing force is greater than the first closing force. Still further, other embodiments have first and second closing forces that are approximately equal.” (¶ 47, lines 3-6). Further, the specification states that “the thickness B can be increased, thereby increasing the external opening force developed by the closure mechanism 238b.” (¶ 44, lines 10-11). The applicant contends that the foregoing disclosure reasonably conveys to one of ordinary skill in the art that when the second closing force is greater than the first closing force, the first closing force is less than the second closing force as recited in claim 22. The applicant further contends that the foregoing disclosure delineates the bounds of claim 22 as a whole to one of ordinary skill in the art as required by 35 U.S.C. § 112, second paragraph. The applicant therefore respectfully requests reconsideration and withdrawal of this rejection of claim 22 under 35 U.S.C. § 112, second paragraph.

Claim 20 has been amended to include the recitations of claim 22. As discussed above, the applicant contends that the rejection, under 35 U.S.C. § 112, second paragraph, has been overcome, thereby placing amended claim 20 in condition for allowance.

Furthermore, the applicant respectfully traverses the rejection of the claims at issue as anticipated by or obvious over Ausnit U.S. Patent No. 4,578,813 (hereinafter “Ausnit”) or as being obvious over Ausnit in view of Porchia et al. U.S. Patent No. 5,647,100 (hereinafter “Porchia”) or Malin U.S. Patent No. 6,167,597 (hereinafter “Malin”).

Amended claim 1, and claims 2-14 dependent thereon, recite a reclosable pouch including a body portion having first and second bag walls. A first closure mechanism includes a first male closure element and a first female closure element. The first female closure element has first and second spaced legs, and the first male and first female closure elements are disposed on opposing sides of the first and second bag walls. A second closure mechanism includes a second male closure element and a second female closure element that is substantially identical to the first female closure element. The second female closure element has third and fourth spaced legs. The second male and second female closure elements are disposed on opposing sides of the first and second bag walls. The first male closure element includes two hook portions extending from an end thereof to engage the legs of the first female closure element and the second male closure element includes only one hook portion extending from an end thereof to engage one of the legs of the second female closure element.

Amended claim 15, and claims 16-19 dependent thereon specify a reclosable pouch including a body portion having first and second bag walls. A first closure mechanism includes a first male closure element and a first female closure element. The first female closure element has first and second spaced legs. The first male and first female closure elements are disposed on opposing sides of the first and second bag walls. A second closure mechanism includes a second male closure element and a second female closure element that is substantially symmetrical with the first female closure element. The second female closure element has third and fourth spaced legs. The second male and second female closure elements are disposed on opposing sides of the first and second bag walls. The first male closure element includes two hook portions extending from an end thereof to engage the legs of the first female closure element and the second male closure element includes only

one hook portion extending from an end thereof to engage one of the legs of the second female closure element, such that the first male closure element disengages from the first female closure element with a first opening force and the second male closure element disengages from the second female closure element with a second opening force that is different than the first opening force.

Amended claim 20, and claim 28 dependent thereon, recite a reclosable pouch including a body portion having first and second bag walls. A first closure mechanism includes a first male closure element and a first female closure element. The first female closure element has first and second spaced legs and the first male and first female closure elements are disposed on opposing sides of the first and second bag walls. A second closure mechanism includes a second male closure element and a second female closure element. The second female closure element has third and fourth spaced legs. The second male and second female closure elements are disposed on opposing sides of the first and second bag walls. The first male closure element includes two hook portions extending from an end thereof to engage the legs of the first female closure element and the second male closure element includes only one hook portion extending from an end thereof to engage one of the legs of the second female closure element, such that the first male closure element engages with the first female closure element with a first closing force and the second male closure element engages with the second female closure element with a second closing force that is greater than the first closing force. The first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements.

Amended claim 23, and claims 24-27 dependent thereon, specify a zipper tape including a first zipper tape portion and a second zipper tape portion. The first zipper tape portion includes a first inner surface and the second zipper tape portion includes a second inner surface. A first closure mechanism includes a first male closure element and a first female closure element. The first female closure element has first and second spaced legs, and the first male and first female closure elements are disposed on opposing sides of the first and second inner surfaces. A second closure mechanism includes a second male closure element and a second female closure element that is substantially identical to the first female closure element. The second female closure element has third and fourth spaced legs. The second male and second female closure elements are disposed on opposing sides of the first and second inner surfaces. The first male closure element includes two hook portions

extending from an end thereof to engage the legs of the first female closure element and the second male closure element includes only one hook portion extending from an end thereof to engage one of the legs of the second female closure element.

None of the cited references discloses or suggests first and second closure mechanisms having substantially identical or symmetrical first and second female closure elements, wherein a first male closure element includes two hook portions extending from an end thereof to engage the legs of a first female closure element and a second male closure element includes only one hook portion extending from an end thereof to engage one of the legs of a second female closure element as recited by claims 1-19 and 23-27. Further, none of the cited references discloses or suggests first and second closure mechanisms, wherein the first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements as recited by claims 20 and 28.

In fact, Ausnit discloses a bag and a reclosable fastener assembly including two opposing non-spaced complementary profile elements. As shown in FIGS. 2-4, a first profile element includes first and second grooves, and a second complementary profile element includes a third groove defined by a generally arrowhead shaped male fastener and a second monohook element. The second profile element also includes a fourth groove defined by a backup flange that projects from the second profile element and the second monohook element. Nowhere in Ausnit is a reclosable pouch or zipper tape disclosed or suggested that includes identical or symmetrical first and second female closure elements as recited in claims 1-19 and 23-27. In addition, Ausnit does not teach or suggest first and second closure mechanisms, wherein the first closing force of the first male and female closure elements is less than the second closing force of the second male and female elements as recited by claims 20 and 28.

Further, Porchia et al. and Marlin do not cure the deficiencies of Ausnit. Specifically, Porchia et al. discloses a closure member that includes opposing and longitudinally extending interlockable rib and groove profiles to provide an audible intermittent clicking sensation as the rib and groove profiles are pressed into an interlocking relation.

Malin discloses a zipper strip for a reclosable package, wherein the zipper strip includes a male profile and an asymmetrical female profile. At least two male interlocking members extend

from a base toward the opposite female interlocking member, wherein each male member has two hook portions extending from a free end thereof.

Because the cited references, alone or in combination, do not disclose or suggest that it would be desirable or even possible to provide a reclosable pouch or zipper tape as recited by the claims at issue, it follows that the claims are not anticipated by or obvious thereover. The prior art must disclose at least a suggestion of an incentive for the claimed combination of elements in order for a *prima facie* case of obviousness to be established. See *In re Sernaker*, 217 U.S.P.Q. 1 (Fed. Cir. 1983) and *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985).

Further, because the dependent claims at issue incorporate the subject matter of the respective independent claims, it follows that the dependent claims are also allowable for the reasons presented above. Therefore, reconsideration and withdrawal of the rejections of claims 1-20 and 23-27, and allowance thereof are respectfully requested.

If there are any issues remaining that can be resolved by telephone, the examiner is invited to call the undersigned.

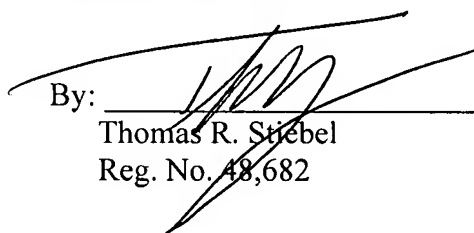
Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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By: 
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